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LOK SABHA

The following Bill was introduced in the Lok Sabha on 16th September, 1954.

BILL* No. 45 OF 1954

A Bill to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Medicinal and Toilet Preparations (Excise Duties) Act, 1954.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “alcohol” means ethyl alcohol of any strength and purity having the chemical composition C_2H_5O H;

(b) “collecting Government” means the Central Government or, as the case may be, the State Government which is entitled to collect the duties levied under this Act;

(c) “dutiable goods” means the medicinal and toilet preparations specified in the Schedule as being subject to the duties of excise levied under this Act;

*The President has, in pursuance of clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, recommended to the Lok Sabha the introduction of the Bill.

(d) "excise officer" means an officer of the Excise Department of any State and includes any person empowered by the collecting Government to exercise all or any of the powers of an excise officer under this Act;

(e) "Indian hemp" has the same meaning as the word "hemp" in the Dangerous Drugs Act, 1930 (II of 1930);

(f) "manufacture" includes any process incidental or ancillary to the completion of the manufacture of any dutiable goods;

(g) "medicinal preparation" includes all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals;

(h) "narcotic drug" or "narcotic" means a substance (other than alcohol) which when swallowed or inhaled by, or injected into, a human being induces drowsiness, sleep, stupefaction or insensibility in the human being and which is a dangerous drug within the meaning of the Dangerous Drugs Act, 1930 (II of 1930);

(i) "opium" has the same meaning as in the Dangerous Drugs Act, 1930 (II of 1930);

(j) "prescribed" means prescribed by rules made under this Act;

(k) "toilet preparation" means any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substance intended to cleanse, improve or alter the complexion, skin, hair or teeth, and includes deodorants and perfumes.

LEVY AND COLLECTION OF DUTIES

3. Duties of excise to be levied and collected on certain goods.—

(1) There shall be levied duties of excise, at the rates specified in the Schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable—

(a) where the dutiable goods are manufactured in bond, in the State in which such goods are released from a bonded-warehouse for home consumption, whether such State is the State of manufacture or not;

(b) where the dutiable goods are not manufactured in bond, in the State in which such goods are manufactured.

(3) Subject to the other provisions contained in this Act, the duties aforesaid shall be collected in such manner as may be prescribed.

Explanation.—Dutiable goods are said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods.

4. Rebate of duty on alcohol, etc., supplied for manufacture of dutiable goods.—Where alcohol, opium, Indian hemp or other narcotic drug or narcotic had been supplied to a manufacturer of any dutiable goods for use as an ingredient of such goods by, or under the authority of, the collecting Government and a duty of excise on the goods so supplied had already been recovered by such Government under any law for the time being in force, the collecting Government shall, on an application being made to it in this behalf, grant in respect of the duty of excise leviable under this Act, a rebate to such manufacturer of the excess, if any, of the duty so recovered over the duty leviable under this Act.

5. Recovery of sums due to Government.—In respect of the duty of excise and any other sums of any kind payable to the collecting Government under any of the provisions of this Act or of the rules made thereunder, the excise officer empowered by the said rules to levy such duty or require the payment of such sums, may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may recover the amount by attachment and sale of dutiable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the sum and send it to the Collector of the district in which such person resides or conducts his business, and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified therein in the same manner as an arrear of land revenue.

6. Certain operations to be subject to licences.—(1) The Central Government may, by notification in the Official Gazette, provide that from such date as may be specified in the notification, no person shall engage in the production or manufacture of any dutiable goods or of any specified component parts or ingredients of such goods or of specified containers of such goods or of labels of such containers except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars as may be prescribed.

7. Offences and penalties.—If any person—

(a) contravenes any of the provisions of a notification issued under section 6; or

(b) evades the payment of any duty of excise payable under this Act; or

(c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true), supplies false information;
or

(d) attempts to commit or abets the commission of any offence mentioned in clause (a) or clause (b),

he shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

8. Power of courts to order forfeiture.—Any court trying any offence under section 7 may order the forfeiture to the collecting Government of any dutiable goods in respect of which the court is satisfied that an offence under this Act has been committed, and may also order the forfeiture of any alcohol, drugs or materials by means of which the offence has been committed and of any receptacles, packages or coverings in which any such goods or articles are contained and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods.

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS

9. Power to arrest.—(1) Any excise officer duly empowered by rules made in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, who on demand of any excise officer duly empowered by rules made under this Act refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false may be arrested by such officer in order that his name and residence may be ascertained.

10. Power to summon persons to give evidence and produce documents in inquiries under this Act.—(1) Any excise officer duly empowered by rules made in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things under subsection (1) may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person concerned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent as such officer may direct and all persons so summoned shall be bound to state the truth on any subject respecting which he is examined or make statements and produce such documents and other things as may be required:

Provided that the exemptions under section 132 and section 133 of the Code of Civil Procedure, 1908 (Act V of 1908) shall apply to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (Act XLV of 1860),

11. Officers required to assist excise officers.—All officers of Customs and Central Excise, and such other officers of the Central Government as may be specified in this behalf, and all police officers and all officers engaged in the collection of land revenue are hereby empowered and required to assist excise officers in the execution of this Act.

12. Owners or occupiers of land to report manufacture of contra-band dutiable goods.—Every owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land, if dutiable goods are manufactured thereon in contravention of the provisions of this Act or the rules made thereunder, shall, in the absence of reasonable excuse, be bound to give notice of such manufacture to a magistrate or to an officer of the Excise, Customs, Police or Land Revenue Department immediately the fact comes to his notice.

13. Punishment for connivance at offences.—Any owner or occupier of land or any agent of such owner or occupier in charge of the management of that land, who wilfully connives at any offence against the provisions of this Act or any rules made thereunder shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

14. Searches and arrests how to be made.—All arrests and searches made under this Act or under any rules made thereunder shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) relating respectively to searches and arrests under that Code.

15. Disposal of persons arrested.—(1) Every person arrested under this Act shall be forwarded without delay to the nearest excise officer empowered to send persons so arrested to a magistrate or if there is no such excise officer within a reasonable distance to the officer in charge of the nearest police station.

(2) The officer in charge of a police station to whom any person is forwarded under sub-section (1) shall either admit him to bail to appear before a magistrate having jurisdiction, or in default of bail forward him without delay in custody to such magistrate.

16. Inquiry how to be made by excise officers against arrested persons forwarded to them.—(1) When any person is forwarded under section 15 to an excise officer empowered to send persons so arrested to a magistrate, the excise officer shall proceed to inquire into the charge against him.

(2) For the purpose of sub-section (1), the excise officer may exercise the same powers, and shall be subject to the same provisions, as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (Act V of 1898), when investigating a cognisable case;

Provided that—

(a) if the excise officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a magistrate having jurisdiction in the case, or forward him in custody without delay to such magistrate;

(b) if it appears to the excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the excise officer may direct, to appear, if and when so required, before the magistrate having jurisdiction and shall make a full report of all the particulars of the case to his official superior.

(3) All officers exercising any powers under section 15 or this section shall so exercise their powers as to ensure that every person who is arrested and detained in custody is produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate.

17. Vexatious search, seizuro, etc., by excise officer.—(1) Any officer exercising powers under this Act or under the rules made thereunder who—

(a) without reasonable ground of suspicion searches or causes to be searched any place, conveyance or vessel;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the movable property of any person on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

18. Failure of excise officers on duty.—Any excise officer who ceases or refuses to perform, or withdraws himself from, the duties of his office, unless he had obtained the express written permission of his superior officer or has given such superior officer two months' notice in writing of his intention or has other lawful excuse, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

SUPPLEMENTARY PROVISIONS

19. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act,

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(i) provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of duty not paid;

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government may think fit, the manufacture, or any process of the manufacture, of dutiable goods or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;

(iii) regulate the removal of dutiable goods from the place where they are stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;

(iv) regulate the production or manufacture of any process of production or manufacture, the possession and storage of dutiable goods or of any component parts or ingredients or containers thereof, so far as such regulation is essential for the proper levy and collection of duties levied under this Act;

(v) provide for the employment of excise officers to supervise the carrying out of any rules made under this Act;

(vi) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for excise officers employed to supervise the carrying out of rules made under this Act and prescribe the scale of such accommodation;

(vii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering dutiable goods into and clearing goods from such warehouses or in the movement of dutiable goods from one bonded warehouse to another;

(viii) provide for the distinguishing of excisable goods which have been manufactured under licence, of materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act;

(ix) impose on persons engaged in the manufacture, storage or sale (whether on their own account or as brokers or commission agents) so far as such imposition is essential for the proper levy and collection of the duties levied under this Act, the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and form of such records and returns, the particulars to be contained therein and the manner in which they shall be verified;

(x) require that dutiable goods shall not be sold or offered or kept for sale except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xi) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor;

(xii) provide for the detention of dutiable goods, plant, machinery or material for the purpose of exacting the duty;

(xiii) provide for the confiscation of dutiable goods in respect of which a breach of any rule made under this Act has been committed, and also for the confiscation of any alcohol, drugs or materials by means of which the breach has been committed and of any receptacle, packages or coverings in which such goods or articles are contained, and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods;

(xiv) provide for the levy of a penalty not exceeding two thousand rupees for a breach of any rule made under this Act;

(xv) provide for the procedure in connection with such confiscation and the imposition of such penalty, the maximum limits up to which particular classes of excise officers may adjudge such confiscation or penalty, appeals from orders of such officers and revision of such orders by some higher authority, the time-limit for such appeals and revisions and the disposal of goods and articles confiscated;

(xvi) authorise and regulate the compounding of offences against, or liabilities incurred under, this Act or the rules made thereunder;

(xvii) authorise and regulate the inspection of factories and provide for the taking of samples or for the making of tests of any substance produced therein and for the inspection or search of any place, conveyance or vessel used for the production, storage, sale or transport of dutiable goods in so far as such inspection or search is essential for the proper levy and collection of the duties levied under this Act;

(xviii) provide for the grant of a rebate of the duty paid on dutiable goods which are exported out of India or shipped for consumption on a voyage to any port outside India;

(xix) exempt any dutiable goods from the whole or any part of the duty levied under this Act where in the opinion of the Central Government, it is necessary to grant such exemption in the interest of the trade or in the public interest;

(xx) notify in the Official Gazette lists of the names and descriptions of preparations which would fall for assessment under any particular item of the Schedule or for regulating their manufacture, transport and distribution;

(xxi) authorise particular classes of excise officers to provide by written instructions for supplemental matters arising out of any rule made by the Central Government under this section.

(3) Where any confiscation or penalty has been adjudged in respect of a breach of any rule under this Act, which is also an offence under section 7, the person concerned shall not be prosecuted under that section.

(4) All rules made by the Central Government under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

20. Bar of suits and limitation of suits and other legal proceedings.—(1) No suit or other legal proceeding shall lie against the collecting Government or against any officer in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted against the collecting Government or against any officer for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

21. Repeals and savings.—If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed:

Provided that all rules made, notifications issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect as if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf.

THE SCHEDULE

(See section 3)

Item No.	Description of dutiable goods	Rate of duty
1.	Medicinal and toilet preparations, containing alcohol, which are prepared by distillation or to which alcohol has been added, and which are capable of being consumed as ordinary alcoholic beverages.	Rupees seventeen and annas eight per gallon of the strength of London proof spirit.
2.	Medicinal and toilet preparations not otherwise specified containing alcohol—	
	(i) Ayurvedic preparations containing self-generated alcohol, which are not capable of being consumed as ordinary alcoholic beverages.	Nil
	(ii) Ayurvedic preparations containing self-generated alcohol, which are capable of being consumed as ordinary alcoholic beverages.	Rupees three per gallon.
	(iii) All others.	Rupees five per gallon of the strength of London proof spirit.
3.	Medicinal and toilet preparations, not containing alcohol, but containing opium, Indian hemp, or other narcotic drug or narcotic.	Nil

Explanation I.—"Gallon" means a measure of capacity which is equivalent to 160 fluid ounces.

Explanation II.—"London proof spirit" means that mixture of ethyl alcohol and distilled water which at the temperature of 51 degrees Fahrenheit weight exactly 12/13th parts of an equal measure of distilled water at the same temperature.

Explanation III.—Where in respect of any dutiable goods the unit of assessment for the purpose of any duty under this Act is a gallon of the strength of London proof spirit, the duty shall be increased or reduced in such proportion as the strength of the dutiable goods is greater or less than that of the London proof spirit.

STATEMENT OF OBJECTS AND REASONS

By virtue of entry 40 in List II in the Seventh Schedule to the Government of India Act, 1935, medicinal and toilet preparations containing alcohol, etc., were subjected to Provincial excise duties. Each Provincial Government fixed its own rates of duty and followed its own procedure to regulate the imports from and exports to other Provinces of such preparations, so that the industry manufacturing these preparations had to contend with several handicaps imposed by such diversities in rates and procedure. In order to secure uniformity, the entry relating to excise duty on medicinal and toilet preparations containing alcohol, etc., were transferred under the Constitution from the State list to the Union list.

2. The present Bill is intended to implement this provision in the Constitution, and proposes uniform rates of excise duty and a uniform procedure for the collection thereof. In the case of Part A and Part B States, the actual collection of the duties will be left to the Governments of the States, as required by article 268 of the Constitution. The existing duties, and the existing procedure for collection under the pre-Constitution statutes of the States which are at present protected under article 277 will be replaced by the rates and the procedure proposed in the Bill.

3. The duties specified in the Schedule are, generally speaking, based on the recommendations of an Expert Committee appointed by Government.

C. D. DESHMUKH.

NEW DELHI;

The 6th September, 1954.

MEMORANDUM

Clauses 3(3) and 20 of the Bill empower the Central Government to make rules. The matters in respect of which such rules may be made are specified therein. The Central Government is also empowered to issue notifications and orders in certain cases.

2. In all Excise enactments of the States as well as of the Union, it has been found necessary both in the interests of Government and of the tax-payers that the Government shall have the power to make rules for the regulation of procedural matters. Procedural difficulties arise from time to time in the light of experience gained. It is, therefore, desirable that the provisions of law relating to procedure should be flexible enough to permit adaptation to the varying circumstances of each case.

3. This is particularly so in the case of the present measure which will require a synthesis to be effected from a vast body of the existing rules and regulations in force in the States, having regard to the sole object of the measure, namely, to bring about uniformity of treatment, in excise matters, of medicinal and toilet preparations containing alcohol, etc. This will be a highly complicated process because, firstly, the excise duty will be collected and retained by the State Governments and secondly, a certain amount of flexibility in statutory operation would be necessary if spurious preparations which are being put on the market in the guise of medicines are not to defeat the prohibition policies of the State Governments under the protection of the present measure.

4. Some of the provisions of the Bill have accordingly been framed so as to lay down only broad principles. Matters such as classification of the preparations as capable or not capable of being used as ordinary alcoholic beverages, regulation, for the purposes of the Act, of production, storage and movement, etc., have been left to be regulated by rules.

5. Provision has been made in clause 19(4) of the Bill for the Rules made under the Act to be placed on the table of both the Houses of Parliament.

6. The matter in respect of which rules can be made under the Bill are more or less the same as those in respect of which rules can be made under section 37 of the Central Excises and Salt Act, 1944.

M. N. KAUL,
Secretary.

